

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Cardenas Analyst: Colin Stevens Bill Number: AB 2065

Related Bills: AB 701 Telephone: 845-3036 Amended Date: 7/6/98

Attorney: Doug Bramhall Sponsor: _____

SUBJECT: Local Business Regs/Prohibit Imposing on Writers, Musicians, Directors or Artists

SUMMARY OF BILL

Under the Business and Professions Code, this bill would prohibit a city or city and county from imposing a work permit requirement, requiring a regulatory license, or imposing a license fee or business tax on writers, musicians, directors and creative artists if the person's home-based business does not exceed certain specified activity thresholds.

EFFECTIVE DATE

This bill would take effect January 1, 1999.

SPECIFIC FINDINGS

Under **current state law**, a city or city and county may levy a regulatory license, business license fee or tax. Local business license taxes frequently are based on a business' gross receipts. Some cities have local ordinances that require an individual working from home to obtain a business license and pay the associated license fees and taxes. In some cities, zoning ordinances determine what type of business is an acceptable home occupation.

Current state law requires that each city which maintains a computerized recordkeeping system or has access to such a system and which assesses a business license tax or fee annually furnish to the FTB a list of all businesses subject to tax in the preceding year. This list must include:

- business name,
- address,
- federal employer identification number,
- type of business activity,
- amount of annual business tax, and
- any other information as the FTB may require.

When requested, the state reimburses cities for costs incurred in connection with furnishing required information. **Currently**, the Franchise Tax Board uses information provided by cities and counties, the Board of Equalization (BOE) and the Department of Consumer Affairs occupational license program in a filing enforcement program, which identifies taxpayers who have a license to operate a business but who have not filed a tax return for a given year. Once identified, the FTB contacts taxpayers and requests that the taxpayer either file a return or notify the department why a return was not filed. If a taxpayer does not comply with the request for information or fails to file a required tax return upon notice and demand, the FTB may issue a proposed assessment.

Board Position:

_____ S	_____ NA	_____ NP
_____ SA	_____ O	_____ NAR
_____ N	_____ OUA	_____ <u>X</u> PENDING

Department Director

Date

Gerald H. Goldberg

7/21/98

Under the Business and Professions Code, this bill would prohibit a city and a city and county from imposing a work permit requirement, a regulatory license or registration requirement, or a regulatory license fee or a business tax on writers, musicians, directors and creative artists if the person does not:

1. Have more than one employee working at home other than a resident;
2. Have more than two business-related deliveries at home per day other than normal residential deliveries;
3. Have more than one client visit at home per hour; or
4. Advertise to the public at large (with the use of business cards, stationary, or computer websites or an e-mail address specifically not being treated as advertising for this purpose.)

Implementation Considerations

By eliminating the requirement that certain segments of self-employed taxpayers obtain business licenses, this bill would reduce by a small amount the number of taxpayers whose information FTB receives from local governments through the filing enforcement program. However, since FTB also receives reports from the Board of Equalization and Department of Consumer Affairs, FTB would most likely still be able to identify some of the taxpayers operating home-based businesses by means other than information from local governments.

Since this bill does not define "writer, musician, director or creative artist," taxpayers from many fields beyond those intended by the author may be excluded from paying local fees or taxes. These definitions would be established by each city or city and county, so the department may receive information on different professions within these fields from each city.

Technical Consideration

Although the legislative findings imply that only writers, musicians, directors and creative artists engaged in work at home will be exempted from work permit or license requirements, the codified law portion of the bill does not require that a writer, musician, director or creative artist work from home in order to avoid local taxes or fees.

FISCAL IMPACT

Departmental Costs

This bill is not expected to significantly impact the department's costs.

Tax Revenue Estimate

Based on data and assumptions discussed below, this bill would result in both revenue gains and losses under the PITL of roughly the same magnitude for a negligible net revenue impact (gain or loss) annually. It is assumed the bill applies to writers, musicians, directors, and creative artists whose home is their principal place of business.

The bill would be effective with income years beginning on or after January 1, 1999.

This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this measure.

Tax Revenue Discussion

The revenue impact of this bill would be determined by the net of: (1) revenue losses attributed to fewer assessments and potentially less compliance on a self-assessed basis by specified taxpayers working at or from their home under specified conditions and (2) revenue gains attributed to lower business expense deductions (city or county license fees no longer incurred or deducted) on self-assessed returns. The revenue impact of each component would be determined by the number of specified taxpayers who work at or from home and meet specified conditions in the bill, any unreported business income, reduced business deductions, and marginal tax rates of these taxpayers.

Each year the department receives in excess of one million business records from city business license sources for individuals who own businesses. Income tax assessments issued through the PIT filing enforcement program that are based on city business license sources average about \$12 million in collections annually. It is not known how much of the \$12 million collected annually is related specifically to writers, musicians, directors, and creative artists who work at or from their home. Between 20% and 40% is attributed to individuals with home-based businesses. The bill provides no specific definition for writers, musicians, directors, and creative artists. Therefore, for the estimate, the broadest interpretation of these terms is assumed. If one-fourth of the individuals with home-based businesses could be construed as providing "creative" products or services and if half of those individuals would not have been identified through other information sources, revenue losses would be on the order of \$500,000. Once taxpayers and/or unreported sources of income are identified and assessed, compliance on a self-assessed basis by these taxpayers improves in subsequent taxable years.

Revenue gains from no city or county business license fees being deducted as business expenses would probably not exceed \$500,000 (assumes an average annual fee of \$100 and a marginal tax rate of 5% for 100,000 taxable writers, musicians, directors, and creative artists). On balance, net revenue gains/losses would be negligible.

BOARD POSITION

Pending.